

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**MONICA ABBoud, on behalf of  
herself and all those similarly situated,**  
*Plaintiff/Counter-Defendant,*

v.

**LOTTA DOUGH, LLC, d/b/a  
HOBOKEN PIE,**  
*Defendant/Counter-Plaintiff.*

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**Civil Action No. 1:24-cv-00482**

**UNCONTESTED MOTION  
FOR LEAVE TO FILE THIRD-PARTY COMPLAINT**

Defendant, Lotta Dough, LLC d/b/a Hoboken Pie ("*Defendant*" or "*Hoboken Pie*") moves this Court for leave to file its Third-Party Complaint against Third-Party Defendants Boostly, Inc. ("*Boostly*") and ChowNow, Inc. ("*ChowNow*"). Plaintiff, Monica Abboud, is unopposed to the relief sought.

**RELIEF SOUGHT**

1. Hoboken Pie requests the Court's permission to file the attached Third-Party Petition against ChowNow and Boostly. Plaintiff is unopposed to this request.

2. Boostly is a text-marketing platform for restaurants. Upon information and belief, Boostly and ChowNow are related corporations.

3. According to Boostly, it collects customer data, builds a compliant database, and meets opt-in compliance standards for text-message marketing.

4. ChowNow is an online food ordering platform that connects customers with local restaurants and helps businesses establish an online presence by providing custom online ordering systems and marketing support. ChowNow collects customer information--including

telephone numbers which it provides to Boostly--and Boostly uses that information to send marketing text messages to restaurant customers.

### **PROCEDURAL HISTORY**

5. Currently pending before the Court is Defendant's Motion to Compel Arbitration and Dismiss (DKT 25) and Plaintiff's Opposition to Motion to Compel Arbitration and Dismiss (DKT 31).

### **GROUND FOR RELIEF**

6. Defendant's Motion to Compel Arbitration and Dismiss is premised, in part, on the applicability of ChowNow's terms of service to Plaintiff--which include a class-action waiver and consent to binding arbitration--vis-a-viz Defendant's status as a licensee of ChowNow's online ordering platform. (DKT 25 at 2-5) In opposition to Defendant's Motion to Compel Arbitration and Dismiss, Plaintiff argues that "even if [Plaintiff accepted ChowNow's terms of service], the Court still must deny Defendant's [m]otion, as Lotta Dough is not a party to the alleged Terms of Service and is not a third-party beneficiary who could enforce its provisions as a non-signatory." (DKT 31 at 2)

7. Assuming Plaintiff is correct, ChowNow and Boostly--as the entities responsible for building, implementing, and managing Defendant's marketing platform--are, or may be, liable to Defendant for (i) failing to assure phone numbers in Defendant's point-of-sale platform were not registered with the Do-Not-Call Registry prior to sending marketing texts, (ii) obtaining consent from Hoboken Pie's customers in compliance with the TCPA, and/or (iii) searching the Do-Not-Call Registry prior to sending texts messages and nevertheless sending text messages to mobile numbers on the Do-Not-Call Registry; either way, Boostly and ChowNow acted negligently. To be sure, Boostly and ChowNow owed Defendant a duty to act as a reasonably

prudent text-messaging service provider would act under the same or similar circumstances. For example, a reasonably prudent text-messaging service provider would assure that it complied with the TCPA--especially in light of today's TCPA litigation climate.

#### **BASES FOR LEAVE**

8. Permitting the third-party complaint at this time will not prejudice any party--in fact, Plaintiff does not contest Defendant's request for permission to file the attached Third-Party Complaint against Boostly and ChowNow.

9. On November 22, 2024, the undersigned wrote the Court to check on the status of the pending Motions for Leave to File Defendant's Supplemental Motion to Dismiss (DKT 9) based on *Looper Bright*, and its Reurged Motion to Dismiss (DKT 12) in response to Plaintiff's Amended Complaint given that Defendant's deadline to amend its pleadings was approaching.

10. The undersigned also wrote the Court on January 14, 2025, inquiring about the status of Defendant's pending Supplemental Motion to Dismiss (based on *Looper Bright*) given the upcoming deadlines in the scheduling order. On April 18, 2025--after the Court ruled on the supplemental motion to dismiss--Defendant filed its Original Answer and Counterclaims (DKT 24) and its Motion to Compel Arbitration and Dismiss (DKT 25).

11. The parties had not engaged in discovery given the pending Motion to Compel Arbitration and Dismiss until last week when Plaintiff served its first set of written discovery on Defendant.

#### **PLAINTIFF DOES NOT CONTEST DEFENDANT'S REQUEST FOR LEAVE TO FILE ITS THIRD-PARTY COMPLAINT**

12. The undersigned conferred with Plaintiff's counsel prior to filing this motion. Plaintiff's counsel is unopposed to Hoboken Pie's motion requesting leave to join ChowNow and Boostly to this lawsuit as third-party defendants.

### CONCLUSION

13. For these reasons, Defendant prays that the Court grant leave of court to file Defendant's Third-Party Complaint and for all further relief to which Defendant is entitled.

Dated: July 21, 2025.

Respectfully submitted,

Bradley B. Clark Law Group, P.C.

/s/ Bradley B. Clark

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### CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the above and foregoing instrument to be served on the following counsel of record on July 21, 2025:

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/s/ Bradley B. Clark